IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3282 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

N S SHAH

Versus

MANAGER, INDIAN OIL CORPORATION LTD.,

Appearance:

1. Special Civil Application No. 3282 of 1991
MS SANGITA PAHWA for Petitioner
MR RP BHATT with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/12/2001

C.A.V. JUDGEMENT

1. By this petition under Article 227 of the Constitution, the petitioner, a driver, has challenged

the award of the Labour Court, Vadodara in Reference (LCV) No.366 of 1981 whereby his demand and dispute for reinstatement with backwages was rejected.

2. The petitioner was dismissed after being chargesheeted for three charges and a regular

departmental enquiry into them. The petitioner had also preferred an appeal from the order of dismissal dated 16.4.1981, which appeal was dismissed by the appellate authority after giving an opportunity of being heard to the petitioner. During the proceedings before the Labour Court, in a full-fledged hearing, the preliminary issue regarding the propriety and legality of the enquiry was adjudicated and the enquiry was upheld. And thereafter, by the impugned award, the Labour Court has also decided the issues regarding sufficiency of evidence in proof of the charges and the propriety of punishment against the petitioner after an elaborate exercise of weighing and appreciating the evidence on record. During the process, the Labour Court has recorded the finding that one of the three charges, involving assault and beating of the superior officer amounting to riotous behaviour, was not proved and the finding of the Enquiry Officer in that regard was held to be perverse.

2.1 Against the backdrop of the above outline of facts, the case of the petitioner was canvassed mainly on the grounds that the award was perverse insofar as the evidence in respect of the other two charges was also insufficient or contradictory; that no act amounting to misconduct was committed; that even assuming the misconducts to have been proved, it was a fit case for judicial intervention in exercise of the powers under Section 11-A of the Industrial Disputes Act, 1947 (`the Act' for short) and that, in any case, the punishment was shockingly disproportionate.

3. In order to appreciate the arguments addressed on behalf of the petitioner, it would be necessary to advert to few necessary details emerging from the record. The charges levelled against the petitioner and held to have been proved even by the Labour Court are:

(i) wilful insubordination or disobedience whether alone or in combination with other or others of any lawful and reasonable order of his superior; and

(ii) Causing damage to work in progress or to any property of the Corporation either

wilfully or through negligence.

These two charges in the form of two clauses of Clause 30 of the Conduct, Discipline and Appeal Rules of the respondent were substantiated by the details of the incident that took place on 5.12.1980 and 6.12.1980. On 5.12.1980, the petitioner was alleged to be in charge of vehicle No.GRE 7938 meant for official tour of Pipeline Engineers. When he was asked by the officer to drive the vehicle to a doctor, since the officer was having headache and bodyache, the petitioner refused to drive and, when the other officer sought to drive the vehicle, the petitioner laid himself down in front of the vehicle and abused his superior officer. When the petitioner was, upon his refusal to drive the vehicle, asked to report to his headquarter on the next day, he did not comply and again laid himself down before the vehicle preventing the officers from moving to the site for performing their official duties. Out of these basic and broad facts, there undisputably was sufficient evidence to prove the incident of 5.12.1980. It was submitted that the alleged incident of 6.12.1980 was not proved. Examining these arguments and going through the elaborate discussion of the evidence in the impugned award as also the enquiry report, it was found that more than one witness had deposed in support of the allegation and the depositions had withstood the cross-examination. The only discrepancy in the evidence regarding the incident of 5.12.1980 was that the officers had intended to go to a movie and not to the doctor as alleged. As regards the incident of 6.12.1980, it was vehemently contended that the enquiry officer had mainly relied upon the deposition of the officer who was the complainant and the proof of innocence of the petitioner not being convincing.

4. The learned counsel Mrs.Sangita Pahwa vehemently argued that as for the first charge of wilful insubordination, the petitioner was asked to drive at night after a day of gruelling duty and the order to drive superior officers to a theatre was not a reasonable or lawful order for the disobedience of which a driver can be punished. And as for the incident of 6.12.1980, the reliance by the Enquiry Officer on the lack of convincing proof of innocence was canvassed as revelation of the biased mind of the Enquiry Officer. It was submitted that in all likelihood the petitioner was belabouring under a serious misconception about the rules of custody of vehicle and under an impression that he might be responsible for any accident that might be committed by any other person driving the vehicle in his charge, he could have tried to prevent the vehicle from

being driven by anyone else. And if that be so, a lenient view could have been taken and, in any case, the punishment of dismissal for such a solitary incident was shockingly disproportionate. However, it is not anywhere found on the record that the petitioner was at the relevant time belabouring under any such misconception or had any reason to have any such impression.

In support of her submission, the learned counsel relied upon the judgment of the Apex Court in VED PRAKASH CHAUDHRY v. STATE OF HARYANA 1980 (Suppl.) SCC 371, in which acceding to the suggestion of the Court, an order taking care of the equity of the situation was invited and on the delinquent lecturer expressing contrition for his conduct was dealt with leniently.

The judgment in RAMA KANT MISRA v. STATE OF UTTAR PRADESH [(1982) 3 SCC 346] was relied upon to submit that the punishment of dismissal for use of indiscreet, indecent or threatening language to superior only once in the course of long unblemished service was disproportionately excessive and in case of the punishment being improperly or unjustifiably harsh, interference under Section 11-A of the I.D. Act was called for.

And the celebrated judgment of THE WORKMEN OF M/S. FIRESTONE TYRE & RUBBER COMPANY OF INDIA PVT. LTD. v. THE MANAGEMENT & OTHERS [(1973) (1) SCC 813] was relied upon to submit that before introduction of Section 11-A of the I.D.Act , the right to take disciplinary action and to decide the quantum of punishment was regarded as managerial function, but the employers were expected to conduct proper enquiries in accordance with the standing orders and if in such cases the finding was plausible conclusion from the evidence, the Tribunal had no jurisdiction to interfere. However, after the introduction of Section 11-A of the I.D.Act, the Tribunal is clothed with the power to re-appreciate the evidence and satisfy itself whether the evidence established the misconduct.

Thus, the case of the petitioner was summed up with the submission that the Labour Court ought to have appreciated the discrepancies in the findings returned in the enquiry report and interfered with the order of punishment in exercise of the powers under Section 11-A of the Act and it not having done so, this Court should quash the award as being perverse and grant the relief of reinstatement at the end of a legal marathon spanning over 20 years.

5. A few relevant aspects have to be noted at this stage. After the petition being filed in April 1991, after six years of the proceedings in the Labour Court, when the petition was admitted and Rule was made returnable on 18.11.1991, even the notice of Rule was not served till 18.11.1992. According to the order dated 21.3.2000, the notice issued to the respondents had not yet been received back and, therefore, fresh notice was ordered to be issued. The other important aspect is that the factual controversies were sought to be raised and discrepancies or insufficiency of evidence were sought to be pointed out and amplified on behalf of the petitioner on the basis of selected pieces of evidence that were annexed and, therefore, it was vehemently opposed on the ground that the finding of facts were recorded after taking a comprehensive view of the totality of evidence on record. On the other hand, there are obvious and well-established constraints in exercise of revisional or writ jurisdiction under Article 227 or even Article 226 of the Constitution. In this context, a reference may be had to the following observations of the Apex Court in APPAREL EXPORT PROMOTION COUNCIL v. A.K.CHOPRA [AIR 1999 SC 625] :-

> "17. .....The High Court appears to have overlooked the settled position that in departmental proceedings, the Disciplinary Authority is the sole Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion with regard to the guilt of the delinquent, for that of the departmental

authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty...."

6. It is also recently held by the Supreme Court in ESTRALLA RUBBER v. DASS ESTATE (P) LTD. [(2001 8 SCC 97] that Article 227 does not confer an unlimited prerogative upon High Court to correct all wrong decisions or to prevent hardships caused thereby. Exercise of this power in interfering with the orders of Courts or Tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice where, if the High Court does not interfere, a grave injustice remains uncorrected. The High Court acting under that Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error which is not apparent on the face of the record.

7. Several judgments were cited to submit that the powers under Section 11-A of the I.D.Act need not be exercised out of an uncalled for or misplaced sympathy. And in cases of serious misconduct, it is the discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

The respondent also relied upon the following observations of the Supreme Court in PUNJAB DAIRY DEVELOPMENT CORPORATION LTD. v. KALA SINGH [AIR 1997 SC 2661]:

" In view of the proof of misconduct, the necessary consequence would be that the management has lost the confidence that the appellant would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A to grant relief of reinstatement with minor penalty."

8. In the facts of the present case, it is seen that the acts of insubordination and causing damage to work in progress by preventing movement of the vehicle even by other person are held to have been proved on the basis of

cogent evidence and are practically admitted by the petitioner. The contention of the order to drive on 5.12.1980 being at a time when the duty hours were over appears to have been raised for the first time. And even assuming that the order to drive the officers to a clinic or to a theatre was not lawful and reasonable, the admitted act of preventing the vehicle from plying by anyone else clearly indicates a defiant and unruly behaviour on the part of the petitioner. It would be hazardous for the Court, and for that matter for any third party, to fix a standard of behaviour which can be tolerated in case of a driver in view of the peculiar kind of duties that a driver has to perform and the confidence and rapport that he must enjoy. The proved misconduct of the driver would be the most relevant aspect in considering whether the Labour Court ought to have exercised its powers under Section 11-A of the Act. Section 11-A of the I.D.Act empowers the Labour Court to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it may think fit as also to award lesser punishment on condition of it being satisfied that the order of discharge or dismissal was not justified. It, therefore, follows that if the Court is satisfied that dismissal was justified in a given case, it lacks the jurisdiction to interfere with the order of punishment. In the facts of the present case, the satisfaction of the Labour Court about the dismissal being justified is reached on the basis of cogent reasoning and recorded in no uncertain terms. The punishment of dismissal is also not found to be too harsh in the facts and circumstances of the case. And, thus, no reason is made out to interfere, in exercise of the powers under Article 227 of the Constitution, with the decision reached after following an appropriate judicial procedure.

9. In the facts and for the reasons discussed hereinabove, the impugned award of the Labour Court is not found to be perverse or, in any way illegal or without jurisdiction. There is also no reason to hold that the Labour Court ought to have exercised its jurisdiction under Section 11-A of the Act to interfere with the punishment of dismissal and the punishment is also not found to be shockingly disproportionate in view of the gravity of the misconduct. The petition is, therefore, dismissed. Rule is discharged with no order as to costs. Sd/-

(D.H.Waghela, J.)

(KMG Thilake)